MALAYSIAN REPORTS

Public Prosecutor v Krishnan & Anor

SUPREME COURT (KUALA LUMPUR) – CRIMINAL REFERENCE NO 3 OF 1988
ABDUL HAMID LP, HASHM YEOP A SANI CJ (MALAYA) AND AJAIB SINGH SCJ
30 JANUARY AND 17 MARCH 1989

Road Traffic – Goods vehicle – Excessive weight – Tractor and trailer – Whether tractor a goods vehicle – Articulated vehicle – Maximum permissible laden weight – How calculated – Motor Vehicles (Construction and Use) Rules 1959, r 2 – Road Traffic Ordinance 1958, s 2

Words and phrases – 'Goods vehicle' – Road Traffic Ordinance 1958, s 2

Words and Phrases – 'Articulated vehicle' – Motor Vehicles (Construction and Use) Rules 1959, r 2

In this case a tractor drawing a trailer was stopped by an officer of the Road Transport Department. The trailer was loaded with coal. Suspecting that the goods were overloaded the officer had the tractor and the trailer weighed and found the total weight to be 26 tons 14 cwts and 25 lbs where the combined maximum laden weight allowed under the carrier's licences for the tractor and the trailer was 360 cwts (18 tons). The respondents were charged for offences under s 420(2) of the Road Traffic Ordinance 1958 and convicted in the magistrate's court. On appeal to the High Court, the learned judge allowed the appeal (Perak Criminal Appeal No 152 of 1982). He held that the tractor was not a goods vehicle within the meaning of the definition in s 2 of the Road Traffic Ordinance 1958 and came to the conclusion that since the vehicles could be uncoupled from one another the trailer should have been detached and weighed separately by itself. On the application of the Public Prosecutor the following questions were reserved for the determination of the Supreme Court:

(a) Whether a prime mover (which is commonly referred to as a tractor), when used for the carriage of goods solely, is a goods vehicle within the definition of s 2 of the Road Traffic Ordinance 1958.
(b) If the answer to question (a) is in the affirmative, whether a prime mover drawing a semi-trailer is an articulated vehicle as defined by r 2 of the Motor Vehicles (Construction and Use) Rules 1959 (LN 170/1959).
(c) If the answer to question (b) is in the affirmative, whether the prime mover, the trailer and the load ought to be weighed together to determine the laden weight of the articulated vehicle.
(d) Whether the maximum permissible laden weight (MPLW) as specified in the condition attached to the trailer's carrier's licence refers to the combined weight of the articulated vehicle and the load of the said vehicle.

Held:

(1) The tractor comes within the definition of 'goods vehicle' in s 2 of the Road Traffic Ordinance as it is a motor vehicle which was being used for the carriage of goods.

(2) The tractor in this case was licensed as a carrier solely for the purpose of drawing the trailer and the trailer was licensed only to be drawn by the tractor. The maximum permissible laden weight of 360 cwts must be taken as the weight of the whole unit, that is, the tractor and the trailer, as the condition in the carrier's licence of the trailer specifically refers to the 360 cwts as the combined weight. Clearly, reading the two licences together, the maximum permissible laden weight of the tractor and the trailer was not to exceed 360 cwts and they were quite rightly weighed together.

(3) The questions referred to the court must be answered in the affirmative and the convictions and fines imposed on the respondents by the learned magistrate are upheld.

Case referred to

1 *Overseas Chinese Transport Co Ltd* v *PP* [1965] 1 MLJ 260 (distd)

Legislation referred to

Courts of Judicature Act 1964 s 66
Motor Vehicles (Construction and Use) Rules 1959 r 2
Road Traffic Ordinance 1958 ss 2, 120(2)

Appeal from: Perak Criminal Appeal No 152 of 1982 (High Court, Ipoh)

Ng Aik Guan (Deputy Public Prosecutor) for the applicant.

Gurbachan Singh for the respondents.

Cur Ad Vult

Ajaib Singh SCJ (delivering the judgment of the court): This is a reference under s 66 of the Courts of Judicature Act 1964. By order of the Supreme Court dated 9 May 1988 the following questions were reserved for determination:

(1) Whether a prime mover (which is commonly referred to as a tractor), when used for the carriage of goods solely, is a goods vehicle within the definition of s 2 of the Road Traffic Ordinance 1958.
(2) If the answer to question (1) is in the affirmative, whether a prime mover drawing a semi-trailer is an articulated vehicle as defined by r 2 of the Motor Vehicles (Construction and Use) Rules 1959 (LN 170/1959).
(3) If the answer to question (2) is in the affirmative, whether the prime mover, the trailer and the load ought to be weighed together to determine the laden weight of the articulated vehicle.
(4) Whether the maximum permissible laden weight (MPLW) as specified in the condition attached to the trailer's carrier's licence refers to the combined weight of the articulated vehicle and the load of the said vehicle.

The facts leading to this reference may be stated briefly. On 23 June 1980 an officer from the Road Transport Department stopped a tractor drawing a trailer which was proceeding from Ipoh towards Kuala Lumpur. The trailer was loaded with coal. Suspecting that the goods may be overloaded the officer had the tractor and the trailer weighed and found the total weight to be 26 tons

14 cwts and 25 lbs whereas the combined maximum laden weight allowed under the carrier's licences for the tractor and the trailer was 360 cwts (18 tons).

On 29 June 1981 the respondents were charged in the magistrate's court, Ipoh as follows:

First respondent:

That you on 23 June 1980 at about 10.00 pm at Simpang Pulai in the district of Kinta, in the State of Perak, being the driver of tractor No AP 8623 drawing trailer No T/A 1448, authorized to manager, Central Union Trading & Transport Co Sdn Bhd, No 133, Jalan Pasir Puteh, Ipoh under carrier's licence No CL 2799, did use the said vehicle in contravention of condition No 1 attached to the said licence to wit, you caused a load of 26 tons 14 cwts and 25 lbs or an excess weight of 8 tons 14 cwts 25 lbs from the combined maximum permissible laden weight of 18 tons and that you have thereby committed an offence under s 120(2) and punishable under the same section of the Road Traffic Ordinance 1958.

Second respondent:

That you on 23 June 1980 at about 10.00 pm at Simpang Pulai in the district of Perak, being the holder of carrier's licence No CL 2799 issued in respect of tractor No AP 8623 drawing trailer No T/A 1448, did use the said vehicle in contravention of condition No 1 attached to the said licence, to wit, that the laden weight of the said vehicle was 26 tons 14 cwts 25 lbs or an excess weight of 8 tons 14 cwts 25 lbs from the combined maximum permissible laden weight of 18 tons and that you have thereby committed an offence under s 120(2) and punishable under the same section of the Road Traffic Ordinance 1958.

At the end of the prosecution's case counsel for the respondents submitted that the respondents had no case to answer. He said that the tractor No AP 8623 was not a 'goods vehicle' as defined in the Road Traffic Ordinance. Therefore he submitted that in order to arrive at the laden weight of the goods the tractor should not have been weighed together with the trailer. The learned magistrate, however, did not accept this submission and held that the prosecution had made out a prima facie case against the respondents. She accordingly called for the defence. The respondents were convicted after they chose to remain silent and called no witnesses in defence. The first respondent was fined $1,000 in default four months' imprisonment and the second respondent was fined $800 in default two months' imprisonment.

The respondents appealed and after hearing arguments from both parties the learned judge allowed the appeal and ordered the fines to be refunded.

In his grounds of judgment the learned judge said that the only issue in the appeal was whether the two vehicles, namely the tractor and the trailer, should be weighed together to get the maximum permissible laden weight. He held that the tractor was not a goods vehicle within the definition in s 2 of the Road Traffic Ordinance 1958. He said that the tractor and the trailer had separate carrier's licences albeit with the same reference numbers but with different serial numbers. The vehicles also had separate insurance coverage, registration books, separate road tax and he accordingly held that they were actually two separate vehicles. In the event he came to the conclusion that since the vehicles could be uncoupled from one another the trailer should have been detached and weighed separately by itself.

In his submission before us in this reference, learned counsel for the respondents made substantially the same submissions he had made before the learned magistrate and the learned judge. As to question no 2 he conceded that a trailer is an articulated vehicle as defined by r 2 of the Motor Vehicles (Construction and Use) Rules 1959 – 'articulated vehicle' means a motor vehicle drawing a semi-trailer. But he submitted that the tractor cannot be described as a goods vehicle within the definition of s 2 of the Road Traffic Ordinance 1958. Therefore it was submitted that the tractor should not have been weighed together with the trailer to arrive at the maximum permissible laden weight.

In his submission counsel for the respondents relied strongly on the Singapore case of *Overseas Chinese Transport Co Ltd* v *PP*.[1] In that case a motor vehicle was drawing a trailer when it was stopped at the Woodlands check point. The trailer was licensed as a goods vehicle in Singapore but the drawing motor vehicle was not licensed. The owners of the motor vehicle were convicted on a charge for using it as a goods vehicle without a licence. On appeal Winslow J considered s 2 of the Road Traffic Ordinance of Singapore which defines a goods vehicle as follows:

> 'Goods vehicle' means a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted.

And the learned judge held that 'as the motor vehicle in this case was neither constructed nor adapted for the carriage of goods the conviction must be quashed'.

Counsel for the respondents before us submitted that this Singapore case should be accepted in deciding whether the tractor comes within the definition of a goods vehicle within s 2 of our Road Traffic Ordinance 1958. He says that the definition of a goods vehicle in the Singapore Road Traffic Ordinance is in pari materia with the definition in our Road Traffic Ordinance.

We are, however, unable to accept counsel's submission on this point. In the definition in s 2 in our Road Traffic Ordinance a goods vehicle means:

(a) any motor vehicle constructed or adapted for use for the carriage of goods, and

(b) any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers.

It is quite clear that the above definition of a goods vehicle is certainly not in pari materia with the definition in s 2 of the Singapore Road Traffic Ordinance. In our view the tractor comes within definition (b) above as it is a motor vehicle which was being used for the carriage of goods.

It is pertinent also to examine the contents of the carrier's licences issued in respect of the tractor and the trailer both dated 25 September 1979 and numbered CL 2799. In the licence for the tractor No AP 8623 the second respondent is authorized to use the tractor for the carriage of their goods with the restriction that it shall be used only to draw trailer No T/A 1448.

The carrier's licence issued in respect of the trailer No T/A 1448 sets out the maximum permissible laden weight at 360 cwts combined and restricts its use to the carriage of goods only when it is drawn by the tractor No A/P 8623.

The contents of these two licences must be read together. It must be stressed here that the tractor was licensed as a carrier solely for the purpose of drawing the trailer. And the trailer was licensed only to be drawn by the tractor. The maximum permissible laden weight of 360 cwts must be taken as the weight of the whole unit, ie the tractor and the trailer, as the condition in the carrier's licence of the trailer specifically refers to 360 cwts as the combined weight. We are of the view that the learned judge did not give adequate consideration to the contents of the two licences. He did mention the 360 cwts as the combined weight of the trailer's licence but thought little of it. Clearly, reading these two licences together we are of the view that the maximum permissible laden weight of the tractor and the trailer was not to exceed 360 cwts and they were quite rightly weighed together.

In the event therefore we answer all the four questions in the affirmative and acting under s 66(4) of the Courts of Judicature Act we uphold the convictions and fines imposed on the respondents by the learned magistrate.

Order accordingly.

Solicitors: *Gurbachan Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Mohd Osman bin Pawan v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 47 OF 1986
LEE HUN HOE CJ (BORNEO), MOHAMED YUSOFF AND AJAIB SINGH SCJJ
4 AND 6 JANUARY AND 17 MARCH 1989

Criminal Law – Dangerous drugs – Charge of trafficking – Identity of exhibits – Failure to adduce evidence to provide necessary link in chain of evidence – Conviction for trafficking set aside – Admission by accused – Conviction of possession of dangerous drugs – Dangerous Drugs Act 1952, ss 2, 6, 7 & 39B

Criminal Procedure – Failure to call evidence to provide necessary link in prosecution's case – Identity of exhibits – Gap in prosecution's case – Dangerous Drugs Act 1952, s 39(B)

In this case a team of customs officers acting on information received entered the flat occupied by the appellant on 17 March 1983. The customs officers seized a yellow plastic bag which they had seen the appellant carry into the flat and also a canvas bag locked with a small padlock. The appellant was taken to the customs department with the exhibits. The appellant was asked to open the package wrapped in newspaper in the plastic bag. When it was opened it was found to have six bundles of 50 rolls each containing what was later ascertained to be cannabis. A customs officer forced open the canvas bag and it was found to contain three big packages and one small package. The exhibits were handed over to a Superintendent of Customs who kept all the exhibits in the department's strong-room. According to him he received altogether 300 rolls of cannabis in the plastic bag and 4,000 rolls in the canvas bag. On 19 March the Superintendent of Customs labelled all the exhibits and on 21 March 1983 he packed and sealed them and sent them to the chemist. On 30 May 1983 he collected them back from the chemist with the chemist's report. The chemist in his evidence said that he received four packages containing 3,997 rolls of plant material which, upon analysis, he found to be cannabis. He also examined a yellow plastic bag with a newspaper package containing 299 rolls, which on analysis he also found to be cannabis.

The appellant was subsequently charged and convicted of the offence of trafficking in dangerous drugs. He appealed and the main ground of appeal was that the prosecution had failed to establish a continuous chain of evidence relating to the exhibits, the subject matter of the charge. It was submitted (a) that with the four missing rolls not received by the chemist possibly different exhibits were sent to him; (b) the evidence showed the shoddy manner the exhibits were kept in the customs strong-room. They were not labelled until two days later and it took another two days before they were packed and sealed. The evidence also showed that the exhibits were kept in the strong-room with other exhibits and no register was kept of what other exhibits were kept there. The customs officer who counted the exhibits in the presence of the appellant was not called to give evidence but instead the prosecution made him available to the defence.

Held, allowing the appeal:

(1) In a serious case such as this it is pertinent to emphasize again that investigation officers should not treat the custody of exhibits lightly so as to leave a gap in the chain of evidence relating to the exhibits before their production in court.